IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4434 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUMARPAL KUNDANMAL BAFNA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4434 of 2003

MR UMANG K CHOKSI for Petitioner No. 1

MR RV DESAI A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 11/08/2003

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the validity and legality of the order dated 25th October, 2002 passed by respondent no.3.

2. Learned advocate Shri Umang Choksi appearing for the petitioner has submitted that the petitioner had purchased the property bearing Survey No.2406/A admeasuring 34 square yards situated in Khadia, Ward No.1 of Ahmedabad. A sum of Rs.60,000/- was paid by the petitioner to the seller by way of consideration and the sale deed was registered on 10th June, 1996.

3. It has been submitted by the learned advocate that on 19th July, 2002, respondent no.3 had addressed a notice to the petitioner calling upon him to remain present before him on 30th July, 2002 with certain documents pertaining to the transaction in question. It has been stated in the said notice that the valuation referred to in the sale deed of the property in question was incorrect, and according to him, correct valuation of the property is Rs.1,26,900/-. In reply to the said notice, the petitioner addressed letter dated 30th July, 2002 to respondent no.3.

3. It has been submitted by the learned advocate that without considering the reply, which was submitted by the petitioner, respondent no.3 decided the matter against the petitioner whereby he came to the conclusion that value of the property in question was Rs.1,26,900/- and thereby he directed the petitioner to pay in all a sum of Rs.6940/- towards additional Court Fees Stamp and penalty.

4. Learned advocate has submitted that the impugned order is bad in law for the reason that the notice had been given to the petitioner after a period of six years from the date on which the sale deed had been registered. According to him, as per the provisions of Section 32(A)(4) of the Bombay Stamp Act, 1958 (hereinafter referred to as "the Act"), no action could have been taken by respondent no. 3 after completion of six years from the date on which the deed had been registered.

5. It has been further submitted by him that the impugned order is also not a reasoned order because the authority has not explained the circumstances in which he has come to a different valuation. According to the learned advocate, respondent no.3 ought to have supported the order by cogent and convincing reasons, but in absence of any reason, according to the learned advocate, the impugned order cannot be said to be a just and legal order. It has been therefore submitted by the learned advocate that the impugned order is bad in law and, therefore, it deserves to be quashed and set aside.

6. He has incidentally submitted that aforesaid view has been taken by this Court in Special Civil Application No. 654/2000, a copy of the judgement delivered in the said matter dated 5th December, 2001 has been annexed and marked as Annexure-G to the petition.

7. On the other hand, learned A.G.P.Shri R.V. Desai has submitted that the petitioner has not exhausted equally efficacious alternative remedy available to him. It has been submitted by him that the validity of the impugned order can be very well challenged before the Chief Controlling Revenue Authority and, therefore, the petitioner ought to have approached the said authority. As the petitioner has equally efficacious alternative remedy, according to the submission, the petition should not be entertained.

8. I have heard the learned advocates and have considered the facts of the case. It is not in dispute that the sale deed had been registered on 10th June, 1996 whereas the impugned notice which is at Annexure-D to the petition was sent to the petitioner on 19th July, 2002. It is therefore clear that the notice had been issued after a period of six years. Looking to the provisions of Section 32(A)4 of the Act, it is very clear that it is not open to the authorities to initiate such proceedings after a period of six years. The said legal position is discussed in detail in the judgement dated 5th December, 2001 delivered by this Court in Special Civil Application No. 654/2000.

9. It is true that the petitioner has not exhausted equally efficacious alternative remedy before approaching this Court but looking to the patent illegality in the impugned order, in my opinion, it would not be proper to drag the petitioner into further litigation, especially when the impugned order is bad in law.

10. Looking to the facts and circumstances of the case, it is clear that the impugned order could not have been passed by respondent no.3 after a period of six years and, therefore, the petition is allowed. The respondents are directed to return the sale deed to the petitioner forthwith. The impugned order dated 25th October, 2002 is quashed and set aside. Rule is made absolute with no order as to costs.

[A.R. DAVE, J.]

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